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Agenda item 28

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## CLAIMS RELATING TO SUBSISTENCE FISHING AND SMALL-SCALE OPERATIONS LACKING EVIDENCE OF EARNINGS

### Note by the Director

<b>Summary:</b>	The Director has given further consideration to the best way to publish Technical Guidelines on methods of assessing losses in the fisheries, mariculture and processing sectors, which are intended to assist the 1992 Fund's world-wide network of fishery experts in assessing claims. The Director has also given consideration to the proposal by the 1992 Fund Administrative Council that a more concise version should be prepared for the benefit of claimants and their representatives (Claimants' Guidelines).
<b>Action to be taken:</b>	Decide whether the Technical Guidelines should be published by the consultants in their name and decide whether the 1992 Fund should prepare concise Claimants' Guidelines and, if so, whether the text of the latter should be considered by the 1992 Fund Assembly.

### 1 Introduction

- 1.1 At its February 1999 session the 1971 Fund Executive Committee considered the question of claims in respect of subsistence fishing, ie fishing carried out by individual fishermen mainly for the purpose of providing food for their families. The Committee instructed the Director to study further the admissibility of claims relating to subsistence fishing, in consultation with the Fund's experts and the Food and Agriculture Organization (FAO), and to consider whether guidelines on the admissibility of such claims should be developed (document 71FUND/EXC.60/17, paragraph 5.6).

### 2 Technical Guidelines

- 2.1 A key feature of claims for compensation in respect of small-scale fishing activities, including subsistence fishing, is that they are rarely supported by evidence as to normal levels of income against which to assess claims. In order to assist the 1992 Fund in dealing with such claims in the future the Director engaged a firm of fishery specialists to prepare technical guidelines on methods of assessing losses in fisheries, aquaculture and processing sectors where evidence is likely to be limited or totally lacking.

- 2.2 The Guidelines were aimed primarily at the claims staff of the Fund's Secretariat and the shipowners' insurers as well as their experts working in the field and local claims office staff. One of the benefits of the Guidelines would be that they would enable the 1992 Fund to extend its current network of fishery specialists to include those who are not familiar with the compensation Conventions and the Fund's policy on claims assessment.
- 2.3 At its May 2003 session the 1992 Fund Administrative Council, acting on behalf of the 1992 Fund Assembly, considered the question as to whether the Guidelines should be published, and if so, in what form. In view of the specialised and technical nature of their contents, the Director expressed the view that the authors should publish the Guidelines in their own name in English only, with a foreword by the 1992 Fund indicating that they had been prepared at the 1992 Fund's request.
- 2.4 A number of delegations welcomed the development of the Guidelines as a way of increasing transparency. It was also suggested that Guidelines could be developed in respect of other types of claims.
- 2.5 One delegation considered that, since the instruction to study this matter had been given by the 1971 Fund Executive Committee, any consideration of the Guidelines could only be done in conjunction with the 1971 Fund Administrative Council, and that the publication of the Guidelines would be going beyond the instructions given by the Committee. That delegation also considered that the 1992 Fund Administrative Council could not take a decision on the publication of the Guidelines since it had not seen the whole text of the Guidelines.
- 2.6 Another delegation considered that the authors should publish the Guidelines without giving the impression that the IOPC Funds had approved them. That delegation also suggested that a more concise version could be produced, which would be useful to fishermen.
- 2.7 Another delegation considered that the Guidelines could be published both on the IOPC Funds' website and on the FAO website.
- 2.8 A number of delegations considered that if the Guidelines were to be published as an IOPC Funds document the Assembly should examine them. Other delegations considered that it would be preferable for the Guidelines to be published by the authors with an introduction by the Fund making it clear that it was not a legal document. Several delegations agreed with the suggestion that the IOPC Funds and the FAO could publish them jointly.
- 2.9 The Director pointed out that the Guidelines had not been elaborated with the FAO, but that some of the information and models had been obtained from information published by the FAO.
- 2.10 The Administrative Council instructed the Director to study the matter further and explore the ways in which the Guidelines could be published, as well as the possibilities of producing a more concise version (document 92FUND/AC.1/A/ES.7/7, paragraph 7.11).

*Further consideration by the Director*

- 2.11 Since the May 2003 session of the Administrative Council, the Fund's fishery experts have revised the Technical Guidelines incorporating editorial and content changes requested by the Fund's Secretariat. The focus of the Guidelines is on claims for which there are little or no supporting documentation. However the Guidelines would also have application in the assessment of claims that are well supported by documentation.
- 2.12 The Director has given further consideration as to the best way to publish the Technical Guidelines in light of the comments made at the May 2003 session. He considers that in view of the size of the document, which runs to some 150 pages of A5 pages, and the technical nature of the contents, it would be impracticable for the 1992 Fund Assembly to review the text with a view to issuing the Guidelines as a Fund document.

- 2.13 The Director therefore proposes that the authors be requested to publish a limited number of copies of the Technical Guidelines, making it clear in the foreword that although they were inspired by the Fund, the document had not been approved by the Fund and was not a Fund publication. The Technical Guidelines would be made available to the fisheries experts appointed by the Fund and the P&I insurers to assist them in their assessments of claims, particularly in cases where the experts have limited experience in assessing claims for pollution damage. The Technical Guidelines would form part of the training package that the Fund would use when carrying out claims workshops such as those undertaken in France and Spain in connection with the *Prestige* incident.

### **3 Concise Guidelines for fishery claimants (Claimants' Guidelines)**

- 3.1 The Director has also given consideration to the suggestion made at the 1992 Fund Administrative Council's May 2003 session that a more concise version should be produced that would be aimed at claimants and their representatives.
- 3.2 The Director is of the view that a more concise Claimants' Guidelines could be produced drawing heavily on the work already undertaken on the Technical Guidelines. As with the latter Guidelines, the focus would be on fishermen and their representatives in countries where documentation might be limited, but they would also apply to more developed fishery sectors. The Director considers that the Claimants' Guidelines could complement the existing Claims Manual and that the two documents could be distributed to claimants in the fisheries and mariculture sectors and their representatives. The Claimants' Guidelines would explain in simple terms how oil spills affect fishing, mariculture and processing activities, how to present a claim, what claimants can do to support their claims and how the claims are likely to be assessed.
- 3.3 The Claimants' Guidelines should, in the Director's view, be prepared in the 1992 Fund's three official languages and be approved by the 1992 Fund Assembly.

### **4 Action to be taken by the Assembly**

The Assembly is invited:

- (a) to take note of the information contained in this document;
  - (b) to decide whether the Technical Guidelines should be published by the consultants in their name; and,
  - (c) to decide whether the 1992 Fund should prepare draft concise Guidelines for claimants in the fisheries, mariculture and fisheries sectors and, if so, whether the text should be considered by the governing bodies.
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